

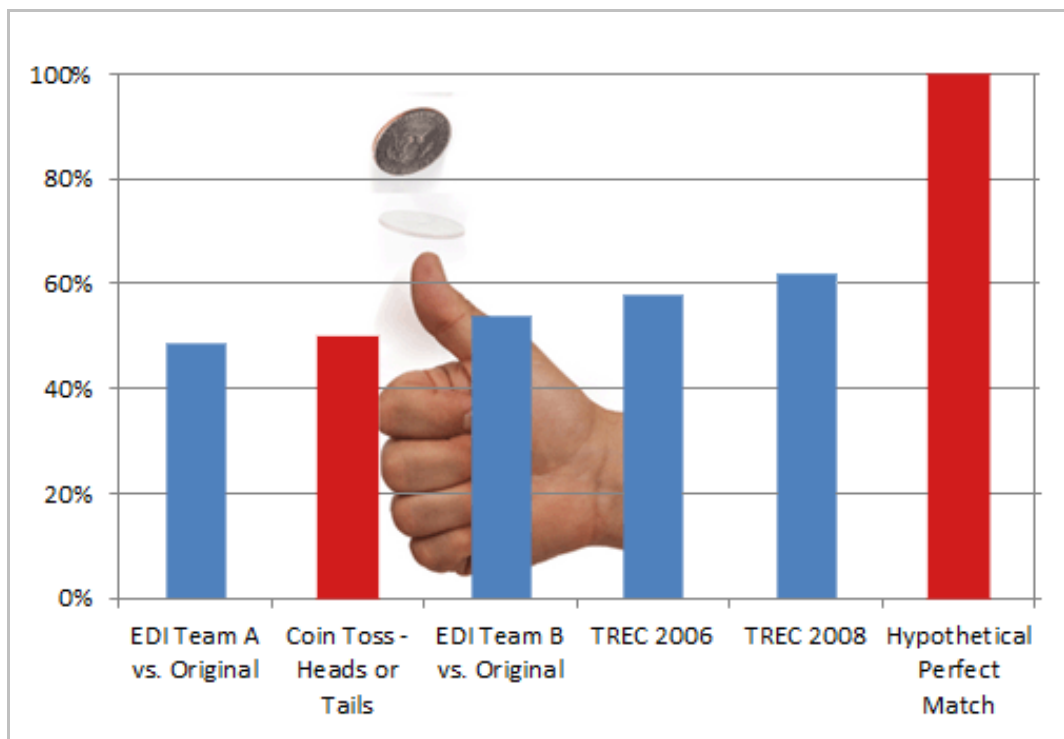
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Flipping Coins, Manual Review, and Producing ESI

Before there was e-discovery and the term ESI, parties reviewing and producing documents did the best they could with a manual review system—basically Scout's honor. There was no reason to measure how well it was working (or not) because there was no alternative to measure against. When alternatives to manual review became available—e.g., encompassing electronic search capabilities, "find similar" features, and predictive coding—interested parties naturally started measuring how well electronically assisted document review worked—or not. The alternative to measure against was, of course, manual review, and the revelation was, lo and behold, manual review does not work well.

Studies performed on the replicability of manual review—i.e., having multiple review teams review the same records for the same purposes—suggest that the odds of both teams finding the same document to be responsive are roughly comparable to a coin toss, ranging from about 48 percent to 62 percent, depending on the study. Parties using manual review alone are paying nearly double over a review based on predictive coding, with no marked improvement in quality relative to the increased price tag. Predictive coding is a process where review decisions made on a subset of the records in a collection are applied to the whole collection without necessarily examining each of them. A recent survey by the eDiscovery Institute shows that the use of predictive coding can cut review costs by 45 percent on average. In a separate EDI study regarding the replicability of predictive coding decisions, predictive coding selected about the same percentage of records selected by the initial manual review team as compared to other subsequent manual review teams.

Reviewer Consistency Studies



How Well Do Manual Reviews Compare to Earlier Manual Reviews on Same Records?

EDI indicates study performed by Electronic Discovery Institute

TREC refers to studies by the Text Retrieval Conference sponsored by the National Institute of Standards and Technology

For corporations the good news is that technology-assisted review can cut legal review bills by half. For outside counsel who are uncomfortable with change (and have grown accustomed to the revenue generated by manual document review), the bad news may be that change and reduced billing are on the horizon.

In addition, while the focus in these studies is cost, corporate counsel may be as concerned with data security risks and the potential associated costs. When lawyers use inefficient review technologies, they end up using more reviewers, and the more people reading the documents, the greater the risk of some sort of loss of confidentiality or data privacy on those records.

What Does This Mean for Corporate Counsel?

Pay close attention to how your records are being selected for review and production. Processes like deNISTing, duplicate consolidation, email threading and predictive coding can when used in conjunction with each other cut review costs by 90 percent or more. This also means that the cost of loss of confidentiality or data privacy associated with manual review can be 10 times higher than technology-assisted document review.

If you don't believe the cited studies, do your own studies. If you're spending hundreds of thousands of dollars on document review, take 1,000 or so records and have them reviewed again by different reviewers and compare the results. When you do this, don't take 1,000 records that are clearly relevant or 1,000 that are clearly irrelevant; use a mix of relevant and irrelevant records.

Keep a standard set of records that you can use to test the performance of outside counsel. Track those results over time.

Nothing will change if everybody is afraid to say that the emperor has no clothes. It's not that lawyers are doing a bad job with the manual review process; rather, the manual review process itself is bad. Get involved in educational activities and share your results.

If you aren't sure whether you have the requisite knowledge in the area of electronic discovery, you can [take a technical competency quiz anonymously](#) on the eDiscovery Institute's website. It is self-scoring and will give you feedback on any answers you might miss. For further information on the topics discussed in this posting you could also [download the "Judges' Guide to Cost-Effective E-Discovery" at no charge](#).

Keywords: electronic discovery, e-discovery, predictive coding, technology assisted review, linear review, manual review

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